IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 110 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATRAJ THEATRE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 110 of 1988
MR AJAY R MEHTA for Petitioner No. 1,3
NOTICE SERVED for Petitioner No. 2
RULE SERVED BY DS for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 01/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, a partnership firm running Natraj Theatre

and its partners have challenged the order dated 8.12.1997 (Annexure "G") passed by the Entertainment Tax Commissioner, Gujarat State, Gandhinagar partly allowing the revision application arising from the order of the Regional Deputy Entertainment Tax Commissioner as confirmed by the Entertainment Tax Collector, Valsad levying tax and penalty for admitting spectators to the theatre on the basis of the so-called complimentary tickets and also dismissing the revision application against the order of the Regional Deputy Entertainment Tax Commissioner as confirmed by the Entertainment Tax Collector levying tax and penalty after making best judgment assessment arising from the finding that the petitioner had issued duplicate tickets for admitting spectators to the theatre.

2. As far as the order partly allowing the revision application is concerned, since the tax and penalty assessed by the Deputy Commissioner at Rs.16,380 and Rs.24,570/- is reduced to Rs.2,184/- and Rs.3,276/-, we are of the view that the Entertainment Tax Commissioner has granted substantial relief to the petitioner in the matter of best judgment assessment in respect of the number of spectators allegedly admitted on the basis of the complimentary tickets. Hence, this part of the order does not call for any interference at our end.

3. Coming to the second part of the order of the Entertainment Tax Commissioner, in so far as the orders of the Assessing Officer and the Collector in Appeal levy of tax at Rs.46,714/- and penalty of Rs.70,071/-, Mr Ajay Mehta, learned counsel for the petitioners has seriously challenged the same. Mr Mehta has sought to contend that the finding given by the authorities that the petitioners had issued duplicate tickets was not borne out by the record and that if at all any theatre owner would issue duplicate tickets, he would atleast make sure that the ticket numbers on such duplicate tickets would tally on all the three portions of the duplicate tickets whereas the finding given by the authorities is that the numbers on the counter tickets collected from the viewers did not tally with the numbers on the counter-foils collected from the door keeper. Mr Mehta has also submitted that there is no finding that the tickets collected from the spectators and the counter-foils collected from the door keeper were matched with the ticket stubs maintained at the booking window in the office and, therefore, it cannot be said that the allegation against the petitioners about duplicate tickets or issuance of duplicate tickets can be said to have been proved.

Mr Mehta has, in the alternative, submitted that the penalty of one and a half times the amount of tax is very harsh and disproportionate to the charge said to have been proved against the petitioners.

4. On the other hand, the learned AGP has supported the orders of the respondent authorities.

5. Having heard the learned counsel for the parties, we are of the view that since the concurrent finding given by the three authorities under the Act that the petitioners had issued duplicate tickets is a finding of fact, this Court would not entertain the challenge to the said finding by undertaking the exercise of reappreciation of the material on record. On the basis of the material on record, it cannot be said that the concurrent finding given by the authorities is so perverse, arbitrary or mala fide so as to warrant interference of this Court under Article 226 of the Constitution.

6. Even so, while not disturbing the finding given by all the authorities that the petitioners had issued duplicate tickets, we cannot help observing that the authorities have not dealt with the petitioners' contention that if duplicate tickets were issued, they would bear the same number on all the three parts of the duplicate tickets i.e. the tickets collected from the spectator, counter-foils collected from the door keeper and the ticket stubs lying with the booking window of the theatre. It would have been better if the authorities had discussed the evidence on record and the submissions made by the petitioners at a greater length. However, since, as already indicated earlier, the finding given by the authorities cannot be said to be perverse, arbitrary or mala fide, even while holding that the authorities were justified in imposing penalty on the petitioners, we find that, in view of the aforesaid peculiar features of the case, imposition of penalty of 150% is quite on the higher side.

7. This would have required us to remand the matter to the authorities. However, considering the fact that the illegality in question had taken place in the year 1986 and this petition is pending since 1988, in the peculiar facts and circumstances of the case, we deem it fit to modify the amount of penalty by reducing it from 150% to 100% of the tax levied by the impugned orders i.e. an amount equal to Rs.46,714/- shall be levied as penalty from the petitioners in respect of the illegality which was the subject matter of the proceedings before

the authorities arising from the show cause notice dated 29.5.1986 at Annexure "B".

8. At this stage, Mr Mehta for the petitioners states that at the time of filing the appeal/revision before the departmental authorities the petitioners had already deposited a sum of Rs.31,550/- and that for paying the balance amount the petitioners may be given easy instalments.

9. In view of the above request, we direct that the respondent authorities shall give credit for the amount/s deposited by the petitioner during pendency of the appeal/revision before the authorities and shall recover the balance amount payable by the petitioners under this judgement i.e. tax of Rs.46,714/- plus penalty of Rs.46,714/- minus the amount/s deposited so far, in ten equal monthly instalments with the first instalment commencing from 15th July, 2004 and the subsequent instalments shall be paid by the 15th day of each succeeding month.

10. Subject to the aforesaid modification in the amount of penalty, the petition is dismissed and Rule is discharged with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)
sundar/-